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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREEM KENTO WASHINGTON,

Defendant and Appellant.

C087175

(Super. Ct. No. CRF177656)

A jury found defendant Kareem Kento Washington guilty of numerous felonies, including three counts of hit and run resulting from the same car accident. The trial court also found true numerous recidivist enhancement allegations, including an allegation defendant was previously convicted of a serious felony. The trial court sentenced defendant to an aggregate term of 17 years four months in state prison.

On appeal, defendant claims it was error to convict him of three hit and run charges arising from the same car accident. He also requests we remand the case to permit the trial court to consider whether to exercise its discretion and strike his prior

serious felony enhancement, pursuant to Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1-2) (SB 1393). The People concede both issues.

We will strike defendant's convictions on counts 5 and 6, and remand the case for the trial court to exercise its discretion to strike the prior serious felony conviction enhancement. The judgment is otherwise affirmed as modified.

I. BACKGROUND

On August 22, 2017, defendant and his girlfriend had an argument while sitting in defendant's car. Defendant told his girlfriend to get out of the car and walk home. She got out of the car and, as she started walking, defendant hit her with the car, knocking her to the ground. Defendant checked on her but drove off after two bystanders approached him in a threatening manner.

Driving between 80 and 100 miles per hour through West Sacramento, defendant lost control of his car, causing him to hit a curb and spin out in an intersection. He stopped, then continued driving between 40 and 65 miles an hour. Defendant hit another curb, causing his car to go over the median and into oncoming traffic where a Nissan Altima crashed into the side of defendant's car. The entire front end of the Nissan was crushed. Defendant got out of his car and started to walk away. Several bystanders yelled for defendant to stop. One bystander held defendant to the ground until law enforcement arrived.

There were four people inside the Nissan. All four suffered from whiplash and bruising as a result of the collision. One of the passengers, an 87-year-old woman, bit off the tip of her tongue on impact.

The People subsequently charged defendant with numerous criminal acts, including: felony hit and run resulting in injury to three of the people in the Nissan (Veh. Code, § 20001, subds. (a), (b)(1)—count 5), felony hit and run resulting in death or permanent serious injury to the 87-year-old woman in the Nissan (Veh. Code, § 20001, subds. (a), (b)(2)—count 4), and misdemeanor hit and run resulting in property damage to

the Nissan (Veh. Code, § 20002, subd. (a)—count 6). The People also alleged several sentencing enhancement allegations, including an allegation that defendant was previously convicted of a serious felony. (Pen. Code, § 667, subd. (a)(1).)¹

A jury found defendant guilty as charged and the trial court found true the recidivist enhancement allegations. The trial court sentenced defendant to an aggregate term of 17 years four months in state prison, including five years for defendant’s prior serious felony conviction, to be served consecutively to the remaining terms.

II. DISCUSSION

A. *Hit and Run*

Defendant contends the single act of failing “to stop and self-report” after colliding with the Nissan, injuring four people, could only be charged as a single count of hit and run. The additional two convictions for hit and run, he argues, should be stricken. The People appropriately concede the issue.

Defendant injured four people in a single collision. He then attempted to leave the scene. He was charged and convicted on two counts of hit and run resulting in injury, counts 4 and 5. “[W]here an accident results in injury to more than one person, and the person causing the accident flees the scene, . . . there is only a single violation” of Vehicle Code section 20001. (*People v. Newton* (2007) 155 Cal.App.4th 1000, 1002.) Accordingly, we accept the People’s concession that count 5 should be stricken.

Based on that same collision, defendant also was convicted of misdemeanor hit and run resulting in property damage in count 6. Vehicle Code section 20002, however, is limited to accidents that “result[] *only* in damage to any property, including vehicles.” (Veh. Code, § 20002, subd. (a), *italics added*.) As discussed above, the collision giving

¹ Undesignated statutory references are to the Penal Code.

rise to this charge resulted in damage to property as well as injuries to four people. Accordingly, we accept the People's concession that count 6 also should be stricken.

B. SB 1393

Defendant's sentence includes a five-year prior serious felony enhancement pursuant to section 667, subdivision (a)(1). At the time of sentencing, the imposition of the section 667, subdivision (a)(1) five-year prior serious felony enhancement was mandatory, and the court had no discretion to strike it. (Former § 1385, subd. (b) ["This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667"].) On September 30, 2018, the Governor signed Senate Bill No. 1393 (2017-2018 Reg. Sess.), which amended this rule. Effective January 1, 2019, a court may exercise its discretion under section 1385 to strike or dismiss a prior serious felony conviction for sentencing purposes. (Stats. 2018, ch. 1013, §§ 1-2.) The People concede this change applies retroactively to these proceedings, and that remand is required. We accept the People's concession. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 972-973.)

Unless there is evidence to the contrary, it is reasonable to infer amendments to statutes that either reduce the punishment for a crime or vest in the trial court the discretion to impose a lesser penalty, such as SB 1393, apply to all defendants whose judgments are not final as of the amendment's effective date. (*In re Estrada* (1965) 63 Cal.2d 740, 742; *People v. Garcia, supra*, 28 Cal.App.5th at pp. 972-973.) There is nothing in the amendment suggesting the Legislature intended it to apply prospectively only, so the act applies retroactively to this case.

At sentencing, the trial court did not clearly indicate it would have declined to exercise discretion to lessen defendant's sentence. Accordingly, the appropriate remedy is to remand the matter. (See *People v. McDaniels* (2018) 22 Cal.App.5th 420, 425 ["remand is required unless the record shows that the trial court clearly indicated when it

originally sentenced the defendant that it would not in any event have stricken a firearm enhancement”].)

III. DISPOSITION

Defendant's convictions on counts 5 and 6 are stricken, along with any related fines and fees. The trial court is directed to prepare an amended abstract of judgment accordingly and to forward a certified copy to the Department of Corrections and Rehabilitation.

Additionally, the matter is remanded to the trial court to consider exercising its discretion under Penal Code sections 667 and 1385 to strike the prior serious felony conviction enhancement. If this consideration results in any additional changes, the trial court is directed to further amend the abstract of judgment reflecting its judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

The judgment is otherwise affirmed as modified.

/S/

RENNER, J.

We concur:

/S/

DUARTE, Acting P. J.

/S/

KRAUSE, J.